

BOISE, TUESDAY, APRIL 11, 2023, AT 1030 A.M.

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 49437

CHARLES ANTHONY CAPONE,)

Petitioner-Appellant,)

V.

STATE OF IDAHO,

Respondent.)

Appeal from the District Court of the Second Judicial District, State of Idaho, Latah County. Hon. Carl B. Kerrick, District Judge.

Silvey Law Office Ltd; Greg S. Silvey, Boise, for appellant.

Hon. Raúl R. Labrador, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

Charles Anthony Capone appeals from judgment summarily dismissing his post-conviction petition. The district court held that all of Capone's prosecutorial misconduct claims were forfeited because they could have been raised on direct appeal and Capone did not show the statutory exception applied. The district court also dismissed the prosecutorial misconduct claims and the claim of ineffective assistance of trial counsel claim for failing to allege a genuine issue of material fact. Capone argues the district court erred in dismissing his petition because all his claims were properly brought in his petition and all claims raised a genuine issue of material fact. The State argues the district court did not err because all of Capone's claims of prosecutorial misconduct conduct could have been raised on direct appeal and, thus, were forfeited pursuant to Idaho Code § 19-4901(b). The State further argues, although I.C. § 19-4901(b) excepts some claims from forfeiture, Capone failed to meet the exception because he failed to show that his post-conviction claims cast substantial doubt upon the finding of guilt and could not have been brought in earlier proceedings. Finally, the State argues that all of Capone's claims failed to allege a genuine issue of material fact and were properly dismissed.